IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4306 of 2001
with
Special Civil Application
Nos. 4315, 4321 and 4352 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMEERKHAN MURTUZAKHAN PATHAN

Versus

POLICE COMMISSIONER AHMEDABAD

Appearance:

MR MITUL K SHELAT for the Petitioner
in each of the matters.

Mr.Uday Bhatt, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3 in all matters.

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/07/2001

ORAL JUDGEMENT

1. In each of these petitions, a common point is involved, which is regarding inclusion of pension income at the time of deciding the claim for compassionate appointment. Since the issue is common, the petitions are disposed of by consent of the parties by way of this common judgment.

2. Petitioner in Special Civil Application No.4306 of 2001 has filed the said petition for quashing and setting aside the order dated 26.7.2000, which is at Annexure `E' to the petition. Petitioner's father was serving as Police Sub Inspector and he passed away on 12.2.1999 while in service. Consequently, the petitioner applied for appointment on compassionate ground on 26.3.1999.

Similarly, Petitioner in Special Civil Application No.4315 of 2001 has filed the said petition for quashing and setting aside the order dated 21.5.2001, which is at Annexure `E' to the petition. Petitioner's father was serving as Police Head Constable and he died on 3.3.2000 while in service, as a result of which the petitioner applied for appointment on compassionate ground on 25.4.2000. The said application was rejected by the impugned order dated 21.5.2001.

Petitioner in Special Civil Application No.4321 of 2001 has similarly filed the said petition for quashing and setting aside the order dated 26.7.2000, which is at Annexure `E' to the petition. Petitioner's father was serving as Assistant Sub Inspector of Police and while in service, he died on 14.9.1999, as a result of which the petitioner applied for appointment on compassionate ground on 27.9.1999. The said application was rejected by the impugned order dated 26.7.2000, at Annexure `E' to the petition.

Similarly, Petitioner in Special Civil Application No.4352 of 2001 has filed the said petition for quashing and setting aside the order dated 1.9.2000, which is at Annexure `E' to the petition. Petitioner's father was serving as Assistant Sub Inspector of Police and while in service, he died on 13.3.1999, as a result of which the petitioner submitted an application dated 20.3.1999 for appointment on compassionate ground. The said application was rejected by the impugned order dated 1.9.2000 at Annexure `E' to the petition.

3. The prayer for compassionate appointment was rejected on the ground that the income of the family of the deceased is exceeding Rs.2,500/- per month and, therefore, as the income is Rs.3,100/- per month, the prayer is rejected. One of such orders is at Annexure `E' pages 32-33 in Special Civil Application No.4306 of 2001. The claim in each of the cases is rejected only on the aforesaid income criterion only. It is not in dispute that while calculating the income of the family of the deceased, family pension was taken into consideration.

4. This Court, in Special Civil Application No.11020 of 1993 in the case of Dilipsinh B. Rathod v. State of Gujarat, decided on 1.1.1999, has taken the view that while calculating the total income of the family of the deceased, income of pension is not required to be taken into consideration. In paragraph 3, it has been observed by this Court as under :-

> ... ...
>
> 3. Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court in the case of C.B. Maru v. Dhanduka Nagar Panchayat, reported in 1993(2) G.L.H. 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai v. State of Gujarat and Ors., reported in 1998(1) GLH (UJ) 23. In C.B. Maru's case (supra), this Court while placing reliance in the case of Smt. Phoolwati v. Union of India and ors., reported in AIR 1991 SC 469, has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/per

month and her husband had died on 15th October, 1990. In the case of C.B. Maru (Supra), the other details of income regarding Dearness Allowance, Medical Allowance, etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken into consideration, the income may have exceeded Rs.1,000/-. In the present case, the father of the petitioner had died in April 1991 and, in the case of C.B. Maru (Supra), the date of the death of deceased is October, 1990 and, therefore, there is hardly a difference of about six months in the date of the death. Even if 505 Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50, i.e. Rs.967.50 and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1,000/-. In any case, the fact remains that this Court has taken the view in the case of C.B. Maru, that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (Supra) this Court, while placing reliance on C.B. Maru's case (supra), has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1,000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1,000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and

conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1,000/-. The respondents are directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date a copy of this order is served upon the respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this Order and for that purpose, direct service is permitted.

... ..."

5. In that view of the matter, the matter is now again required to be sent back to the State Government for arriving at the correct figure of the income of the family of the deceased. However, Mr.Bhatt, learned AGP, submitted that in the earlier matter, attention of the Court was not brought to various aspects. He stated that income criterion can be taken into consideration and since family pension is `income', the same is required to be considered. For that purpose, Mr.Bhatt has relied upon paragraph 4 of the affidavit-in-reply. It is stated in paragraph 4 of the reply as under :-

" ... ...

4. I say and submit that the main object of the scheme for compassionate appointment is to grant appointment on compassionate ground to a dependent family member of a Government servant dying in

harness, thereby leaving his family in penury and without any means of livelihood, to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Accordingly the Government laid down certain guidelines for the first time on 13.10.1975. The same were modified from time to time until new policy is framed on dt. 10-3-2000. The amount of monthly income of a family of deceased Government servant from all sources including family pension irrespective of the number of dependents was fixed and revised from time to time by way of specific quantum beginning with Rs.300/- per month. The details of the prescribed income limit for compassionate appointment for different periods of time is given hereinbelow :

No.	Date from which applicable	Income limit (monthly)
1.	13.10.1975	Rs.300/-
2.	12.05.1977	Rs.400/
3.	1.05.1983	Rs.600/- (Interest at the rate of 9% to be counted on GPF, Gratuity, etc)
4.	1.1.1984	Rs.600/- (counting of interest at the rate of 9% is removed).
5.	1.02.1987	Rs.600/- (Income of a member living separately, not to be considered).
6.	1.06.1988	Rs.1,000/-
7.	1.11.1988	Rs.1,000/- (instead of double pension, only single pension to be considered).
8.	1.12.1991	Rs.1,500/-.
9.	1.5.1992	Rs.2,000/- (Interest not to be counted).
10.	1.12.1992	dependent of Government servant working in Sachivalaya to be offered the

		appointment in Sachivalaya.
11.	1.1.1995	Rs.2,500/-
12.	24.2.1999	Income and the income limit to be considered as to at the time of the death of the Govt. servant. This was made applicable to all pending cases on dt.24.2.99 and cases arose thereafter upto 9.3.2000.
13.	1.03.2000	Criteria of income limit removed and scheme made applicable to Class-III and Class-IV Govt. servant only.

NOTE :- Vide order dated 30.9.1994, the provision of not counting the interest was made effective from 1.12.1991.

Income limit being raised to Rs.2000/-, the effect of order dated 30.9.1994 was given from 1.5.1992.

Income limit being raised to Rs.2500/-, the effect of order dated 14.8.1997 was given from 1.1.1995.

... ..."

Mr. Bhatt, therefore, submitted that in view of the aforesaid facts, the judgment given by the learned single Judge and which is confirmed by the Division Bench requires reconsideration and this Court, therefore, may refer the matters to the Larger Bench. However, in my view, since on the same point, i.e. whether family pension should be included in the income or not, this Court has already taken a decision and the said decision has been confirmed by the Division Bench and, therefore, this court is bound to follow the said judgment as it is a binding precedent.

6. Mr.Shelat, learned Advocate for the petitioners, relied on the judgment of the Apex Court in Balbir Kaur & Anr. etc. v. Steel Authority of India Ltd. & Ors., 2000(4) Supreme 602. Mr.Shelat submitted that in view of the said judgment of the Supreme Court, even otherwise, family pension income should not have been considered. However, in view of the fact that when there is a direct judgment of this Court on this particular issue, i.e. whether family pension should be included or not and

since I am bound by the aforesaid judgment and even I have followed the said judgment in subsequent cases also, there is no necessity to deviate and take contrary view or refer the matters now to the Larger Bench. In view of paragraph 4 of the affidavit-in-reply, it is now an admitted fact that pension income is included in the income of the family of the deceased so far as compassionate appointment to Class III and IV posts are concerned. In that view of the matter, and in view of the judgment dated 1.1.1999, passed by this Court in Special Civil Application No.11020 of 1993, these petitions are required to be allowed. The impugned order is, therefore, accordingly set aside in each of the matters and the matters are sent back to the concerned Department. The Department is directed to take appropriate decision on merits on other points. The Department may take appropriate decision on or before 31st October, 2001. However, while deciding the cases, the family pension income which is received by the family members should not be taken into consideration. Rule is made absolute to the aforesaid extent.

(P.B. Majmudar, J.)

****

(apj)